

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 2/12/2017
Original **Amendment** **Bill No:** SB346
Correction **Substitute**

Sponsor: Sen. Elizabeth "Liz" Stefanics **Agency Code:** 924
Short Title: CHARTER SCHOOL FREE & REDUCED MEALS **Person Writing:** Aguilar/Hopper
Phone: 827-6519 **Email:** PaulJ.Aguilar@state.nm.us

SECTION II: FISCAL IMPACT

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
NFI	Not Quantifiable. See Fiscal Implications	Not Quantifiable. See Fiscal Implications	Recurring	School District Budgets

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	See fiscal implications	See fiscal implications	See fiscal implications	See fiscal implications	General and School District Budgets

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 208 NM-Grown Produce in School Meals
 Relates to Appropriation in the General Appropriation Act: \$1,924.60 Breakfast After the Bell appropriation

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 346 (SB346) amends Section 22-8B-4 NMSA 1978 of the Public School Code, requiring all local and state-chartered charter schools that meet guidelines and that are eligible for school-wide participation in the federal national school lunch program (NSLP) to provide breakfast and lunch to all students who choose to participate.

FISCAL IMPLICATIONS

SB346 requires all eligible local and state-chartered charter schools that meet the U.S. Department of Agriculture (USDA) guidelines to provide breakfast and lunch to all students who choose to participate. This would require local and state-chartered charter schools that do not currently participate in the NSLP to hire a food service director and frontline staff for a food service program within the school. In some instances, local and/or state-chartered charter schools do not have a kitchen in their building. This would require capital outlay expenses in building a kitchen, meeting all state requirements and codes, including a food safety inspection, or would require the local and/or state-chartered charter schools to enter into a food service management company (FSMC) contract with an approved New Mexico Public Education Department (PED) vendor:

http://ped.state.nm.us/nutrition/2017/PED-My_FSMC_Vendors_SY1718-30jan17.pdf .

In order to enter into an FSMC contract agreement, the local and/or state-chartered charter school, not currently participating in the NSLP, would need to administer a Request for Proposal (RfP) for a fixed-price or cost reimbursable contract for the provision of an FSMC to cater and provide meals; or they would have to enter into an agreement (local charter schools only) with the school district in which the local charter school resides for the school district participating in the NSLP to provide food nutrition services to the local charter school. Additional costs for both the RfP option and the district-supported option would need to be considered.

Reimbursable rates, per meal, are set by the USDA for paid, reduced price, and free meals with reimbursements being significantly less for a paid meal as opposed to a free meal (<https://www.fns.usda.gov/sites/default/files/cn/SY2015-16table.pdf>). The local or state-chartered charter school would need to work closely with the PED in completing a paid lunch equity tool, ascertaining costs and balances after costs and in setting the initial cost for meals in order to cover costs of either an FSMC contract or costs of operating a food service program within the school. Federal regulations at 7 Code of Federal Regulations (CFR) §210.14(e) require school food authorities (SFAs), also known as local education agencies or charter schools, participating in the National School Lunch Program to ensure that sufficient funds are provided to the nonprofit school food service account for meals served to students not eligible for free or reduced price meals. If a local or state-chartered charter school could not ensure sufficient funds, then the PED would need to determine and communicate ineligibility and allow an exemption to the changes in the Public School Code as required by SB346.

Federal guidelines also require SFAs to implement and maintain a system to issue benefits and to update the eligibility of children approved for free or reduced price lunches and meal supplements (7 CFR §201.7(c)(1)(ii)). The costs associated with implementing and maintaining a system to provide breakfast and lunch to all students who choose to participate in the NSLP

cannot be quantified.

The PED would need to enter into an agreement with the local or state-chartered charter schools currently not participating in the NSLP or SBP, allowing the school(s) to become school food authorities, review any RfP's created, provide flowthrough funding for the NSLP and SBP, monitor reimbursement requests, and conduct administrative and procurement reviews of these schools.

Total costs to the PED and total costs and any potential revenue (revenue must be used for food nutrition program costs and equipment) to a local and state-chartered charter school would vary, depending on the student population (number of students, number of paid lunch students, number of reduced price students, number of free meal students) and the means for the provision of meals (FSMC contract, local or state-chartered charter school operating a food service program, or local charter school entering into an agreement with school district), and also cannot be quantified.

SIGNIFICANT ISSUES

The NSLP is a *voluntary* program available to all public schools, private schools, and residential child care institutions, which agree to operate a non-profit program, offering lunches that meet federal requirements to all children in attendance. Making this a mandatory program is problematic and may violate federal guidelines. Care should be given to these provisions to ensure schools are not being required to implement a program may not be needed or wanted by the school or parents.

Hungry children have trouble concentrating, get more headaches and infections, are more likely to be hospitalized and are less likely to perform well on athletic fields and in classrooms. It's simply much harder for children at risk of hunger to thrive (<http://nm.nokidhungry.org/hunger-new-mexico>). School meal options available to New Mexico students in public, charter, private, parochial, and Bureau of Indian Education (BIE) schools are extensive and include, in FY17, approximately \$160,000.0 in federal funds and approximately \$2,000.0 in state funds to support breakfast before and after the bell, school breakfast programs, national school lunch programs, fresh fruits and vegetables, and afterschool snacks. Additionally, the New Mexico Children, Youth, and Families Department (CYFD) offers the availability of afterschool dinner to eligible schools.

Approximately two-thirds of all charter schools in New Mexico (local and state-chartered charter schools combined) already participate in the NSLP and SBP (61 out of 96) without a requirement added to the Public School Code mandating participation. The reasons for non-participation vary, including a local or state-chartered school not having the capacity to provide services or electing to provide food services outside the USDA NSLP requirements and program.

The NSLP is a *voluntary* program available to all public schools, private schools, and residential child care institutions, which agree to operate a non-profit program, offering lunches that meet federal requirements to all children in attendance. Through the NSLP, public and non-profit private schools, preprimary classes in schools, and residential child care institutions receive cash reimbursement for each meal served. Participation in the program is voluntary. The sponsors of the program must:

- Serve meals that meet federal requirements;
- Operate a non-profit program;

- Offer free or reduced-price meals to eligible children based on household income;
- Not identify nor discriminate against any eligible student; and
- Operate food service for all students without regard to race, color, national origin, sex, age, or disability.

If an SFA does participate in NSLP, they are *not required* to serve both breakfast and lunch, unless they participate in the Community Eligibility Provision (CEP). “The Community Eligibility Provision is a meal service option for schools and school districts in low-income areas. A key provision of *The Healthy, Hunger Free Kids Act* (HHFKA, Public Law 111-296; December 13, 2010), CEP allows the nation’s highest poverty schools and districts to serve breakfast and lunch at no cost to all enrolled students without the burden of collecting household applications. Instead, schools that adopt CEP are reimbursed using a formula based on the percentage of students participating in other specific means-tested programs, such as the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF).” <https://www.fns.usda.gov/school-meals/community-eligibility-provision>

Federal regulation at 7 CFR (§210.4) reads, “to the extent funds are *available*, [USDA]]will make cash assistance available in accordance with the provisions of the section to each State agency for lunches and meal supplements served to children under the National School Lunch Programs.” If a school meets a certain threshold, 100% of meals are reimbursed. Any difference in the cost of the meals must be made up with non-federal funds.

PERFORMANCE IMPLICATIONS

SB346 may support the PED’s strategic lever that all students are ready to learn by reinforcing the linkage between health and academic success.

ADMINISTRATIVE IMPLICATIONS

Senate Bill 346 (SB346) requires all local and state-chartered charter schools that meet USDA guidelines, and that are eligible for school-wide participation in the federal national school lunch program (NSLP) to provide breakfast and lunch to all students who choose to participate. Local and state-chartered charter schools, not currently participating in the NSLP, would need to enter into a written agreement with the State Agency (PED) in order to finance nonprofit school food service operations (7 CFR §210.7). These same schools would need to determine whether they had the capacity to operate a food service program, whether they would need to write and release a RfP to enter into an agreement with a PED-approved FSMC, or whether they were to pursue a partnership with a school district for food nutrition services (local charter school option only). Additionally, local and state-chartered charter schools, currently not participating in the NSLP or the SBP, would need to demonstrate the utilization and effectiveness of a system designed to issue benefits and to update the eligibility of children approved for free or reduced price lunches and meal supplements and demonstrate menu compliance with the USDA new meal pattern.

The PED would need to conduct administrative reviews of the local and state-chartered charter schools that become new school food authorities to ensure that all federal and state program and procurement regulations and rules are being followed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB208, NM-Grown Produce in School Meals and relates to \$1,924.60 Breakfast After the Bell identified appropriation.

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

SB346 refers to the federal national school lunch program but does not to the federal school breakfast program. The School Breakfast Program (SBP) provides cash assistance to states to operate nonprofit breakfast programs in schools and residential childcare institutions. The USDA Food and Nutrition Services administer the SBP at the Federal level. State education agencies administer the SBP at the state level, and local school food authorities operate the program in schools. SB346 does not refer to guidelines or meeting eligibility in relation to the SBP.

If an SFA does participate in NSLP, they are not required to serve both breakfast and lunch, unless they participate in the CEP. SB346 would set a state requirement that is not required at the federal level.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PED would continue to support school districts, local and state-chartered charter schools and non-public schools with funds for the NSLP, the SBP, fresh fruits and vegetables, afterschool snacks, and Seamless Summer Meal Program while also providing information regarding afterschool meals through the CYFD. The PED would also continue to work with local and state-chartered charter schools, currently not participating in the NSLP or SBP, regarding their options to become a school food authority without requiring participation.

AMENDMENTS

None